

AMENDED IN SENATE MARCH 27, 2003

SENATE BILL

No. 183

Introduced by Senator Sher

February 12, 2003

An act to ~~amend~~ add Chapter 8.6 (commencing with Section 25740) to Division 15 of the Public Resources Code, and to repeal Section 383.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 183, as amended, Sher. Energy: renewable technologies.

Under the Public Utilities Act, the Public Utilities Commission requires electrical corporations to identify a separate rate component to fund in-state operation and development of existing and new and emerging renewable resources technologies. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund. Existing law requires that 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, after deducting certain administrative costs, be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications by providing monetary rebates, buydowns, or equivalent incentives.

The Emerging Renewable Resources Account is established within the Renewable Resource Trust Fund, to accomplish these purposes.

~~This bill would require the Energy Commission to make reasonably available, regularly updated information on funds in the Emerging Renewable Resources Account that remain available for the above stated purposes~~ *recast those provisions in the Public Resources Code. The bill would require the Energy Commission, at least once annually, to publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 383.5 of the Public Utilities Code is~~

SECTION 1. Chapter 8.6 (commencing with Section 25740) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.6. RENEWABLE ENERGY RESOURCES PROGRAM

25740. It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

25741. As used in this chapter, the following terms have the following meaning:

(a) "In-state renewable electricity generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

1 (3) For the purposes of this subdivision, “solid waste
2 conversion” means a technology that uses a noncombustion
3 thermal process to convert solid waste to a clean-burning fuel for
4 the purpose of generating electricity, and that meets all of the
5 following criteria:

6 (A) The technology does not use air or oxygen in the conversion
7 process, except ambient air to maintain temperature control.

8 (B) The technology produces no discharges of air contaminants
9 or emissions, including greenhouse gases as defined in Section
10 42801.1 of the Health and Safety Code.

11 (C) The technology produces no discharges to surface or
12 groundwaters of the state.

13 (D) The technology produces no hazardous wastes.

14 (E) To the maximum extent feasible, the technology removes all
15 recyclable materials and marketable green waste compostable
16 materials from the solid waste stream prior to the conversion
17 process and the owner or operator of the facility certifies that those
18 materials will be recycled or composted.

19 (F) The facility at which the technology is used is in compliance
20 with all applicable laws, regulations, and ordinances.

21 (G) The technology meets any other conditions established by
22 the commission.

23 (H) The facility certifies that any local agency sending solid
24 waste to the facility is in compliance with Division 30
25 (commencing with Section 40000), has reduced, recycled, or
26 composted solid waste to the maximum extent feasible, and shall
27 have been found by the California Integrated Waste Management
28 Board to have diverted at least 30 percent of all solid waste through
29 source reduction, recycling, and composting.

30 (b) “Report” means the report entitled “Investing in
31 Renewable Electricity Generation in California” (June 2001,
32 Publication Number P500-00-022) submitted to the Governor and
33 the Legislature by the commission.

34 25742. (a) Twenty percent of the funds collected pursuant to
35 paragraph (6) of subdivision (c) of Section 381 of the Public
36 Utilities Code shall be used for programs that are designed to
37 improve the competitiveness of existing in-state renewable
38 electricity generation facilities, and to secure for the state the
39 environmental, economic, and reliability benefits that continued
40 operation of those facilities will provide. Eligibility for incentives

1 under this section shall be limited to those technologies found
2 eligible for funds by the commission pursuant to paragraphs (5),
3 (6), and (8) of subdivision (c) of Section 399.6 of the Public
4 Utilities Code.

5 (b) Any funds used to support in-state renewable electricity
6 generation facilities pursuant to this section shall be expended in
7 accordance with the provisions of the report, subject to all of the
8 following requirements:

9 (1) Of the funding for existing renewable electricity generation
10 facilities available pursuant to this section, 75 percent shall be
11 used to fund first tier technologies, including biomass and solar
12 electric technologies and 25 percent shall be used to fund second
13 tier wind technologies.

14 (2) The commission shall reexamine the tier structure as
15 proposed in the report and adjust the structure to reflect market
16 and contractual conditions. The commission shall also consider
17 inflation when adjusting the structure.

18 (3) The commission shall establish a cents per kilowatthour
19 production incentive, not to exceed the payment caps per
20 kilowatthour established in the report, as those payment caps are
21 revised in guidelines adopted by the commission, representing the
22 difference between target prices and the price paid for electricity,
23 if sufficient funds are available. If there are insufficient funds in
24 any payment period to pay either the difference between the target
25 and price paid for electricity or the payment caps, production
26 incentives shall be based on the amount determined by dividing
27 available funds by eligible generation. The price paid for
28 electricity shall be determined by the commission based on the
29 energy prices paid to nonutility power generators as authorized by
30 the Public Utilities Commission, or on otherwise available
31 measures of price. For the first tier technologies, the commission
32 shall establish a time-differentiated incentive structure that
33 encourages plants to run the maximum feasible amount of time and
34 that provides a higher incentive when the plants are receiving the
35 lowest price.

36 (4) Facilities that are eligible to receive funding pursuant to
37 this section shall be registered in accordance with criteria
38 developed by the commission and those facilities may not receive
39 payments for any electricity produced that has any of the following
40 characteristics:

1 (A) Is sold at monthly average rates equal to or greater than the
2 applicable target price, as determined by the commission.

3 (B) Is that portion of electricity generation attributable to the
4 use of qualified agricultural biomass fuel, for a facility that is
5 receiving fuel-based incentives through the Agricultural
6 Biomass-to-Energy Incentive Grant Program established
7 pursuant to Part 3 (commencing with Section 1101) of Division 1
8 of the Food and Agricultural Code. Notwithstanding subdivision
9 (f) of Section 1104 of the Food and Agricultural Code, facilities
10 that receive funding from the Agricultural Biomass-to-Energy
11 Incentive Grant Program are eligible to receive funding pursuant
12 to this section.

13 (C) Is used onsite or is sold to customers in a manner that
14 excludes competitive transition charge payments, or is otherwise
15 excluded from competitive transition charge payments.

16 25743. (a) Fifty-one and one-half percent of the money
17 collected pursuant to paragraph (6) of subdivision (c) of Section
18 381 of the Public Utilities Code, shall be used for programs
19 designed to foster the development of new in-state renewable
20 electricity generation facilities, and to secure for the state the
21 environmental, economic, and reliability benefits that operation of
22 those facilities will provide.

23 (b) Any funds used for new in-state renewable electricity
24 generation facilities pursuant to this section shall be expended in
25 accordance with the report, subject to all of the following
26 requirements:

27 (1) In order to cover the above market costs of renewable
28 resources as approved by the Public Utilities Commission and
29 selected by retail sellers to fulfill their obligations under Article 16
30 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
31 Division 1 of the Public Utilities Code, the commission shall award
32 funds in the form of supplemental energy payments, subject to the
33 following criteria:

34 (A) The commission may establish caps on supplemental
35 energy payments. The caps shall be designed to provide for a
36 viable energy market capable of achieving the goals of Article 16
37 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of the
38 Public Utilities Code. The commission may waive application of
39 the caps to accommodate a facility, if it is demonstrated to the
40 satisfaction of the commission, that operation of the facility would

1 *provide substantial economic and environmental benefits to end*
2 *use customers subject to the funding requirements of Section 381*
3 *of the Public Utilities Code.*

4 *(B) Supplemental energy payments shall be awarded only to*
5 *facilities that are eligible for funding under this subdivision.*

6 *(C) Supplemental energy payments awarded to facilities*
7 *selected by an electrical corporation pursuant to Article 16*
8 *(commencing with Section 399.11) of Chapter 2.3 of Part 1 of*
9 *Division 1 of the Public Utilities Code shall be paid for the lesser*
10 *of 10 years, or the duration of the contract with the electrical*
11 *corporation.*

12 *(D) The commission shall reduce or terminate supplemental*
13 *energy payments for projects that fail either to commence and*
14 *maintain operations consistent with the contractual obligations to*
15 *an electrical corporation, or that fail to meet eligibility*
16 *requirements.*

17 *(E) Funds shall be managed in an equitable manner in order*
18 *for retail sellers to meet their obligation under Article 16*
19 *(commencing with Section 399.11) of Chapter 2.3 of Part 1 of*
20 *Division 1 of the Public Utilities Code.*

21 *(2) The commission may determine as part of a solicitation,*
22 *that a facility that does not meet the definition of “in-state*
23 *renewable electricity generation technology” facility solely*
24 *because it is located outside the state, is eligible for funding under*
25 *this subdivision if it meets both of the following requirements:*

26 *(A) It is located so that it is or will be connected to the Western*
27 *Electricity Coordinating Council (WECC) transmission system.*

28 *(B) It is developed with guaranteed contracts to sell its*
29 *generation to end use customers subject to the funding*
30 *requirements of Section 381 of the Public Utilities Code, or to*
31 *marketers that provide this guarantee for resale of the generation,*
32 *for a period of time at least equal to the amount of time it receives*
33 *incentive payments under this subdivision.*

34 *(3) Facilities that are eligible to receive funding pursuant to*
35 *this subdivision shall be registered in accordance with criteria*
36 *developed by the commission and those facilities may not receive*
37 *payments for any electricity produced that has any of the following*
38 *characteristics:*

39 *(A) Is sold under an existing long-term contract with an*
40 *existing in-state electrical corporation if the contract includes*

1 *fixed energy or capacity payments, except for that electricity that*
2 *satisfies subparagraph (C) of paragraph (1) of subdivision (c) of*
3 *Section 399.6 of the Public Utilities Code.*

4 *(B) Is used onsite or is sold to customers in a manner that*
5 *excludes competitive transition charge payments, or is otherwise*
6 *excluded from competitive transition charge payments.*

7 *(C) Is produced by a facility that is owned by an electrical*
8 *corporation or a local publicly owned electric utility as defined in*
9 *subdivision (d) of Section 9604 of the Public Utilities Code.*

10 *(D) Is a hydroelectric generation project that will require a new*
11 *or increased appropriation of water under Part 2 (commencing*
12 *with Section 1200) of Division 2 of the Water Code.*

13 *(4) Eligibility to compete for funds or to receive funds shall be*
14 *contingent upon having to sell the output of the renewable*
15 *electricity generation facility to customers subject to the funding*
16 *requirements of Section 381 of the Public Utilities Code.*

17 *(5) The commission may require applicants competing for*
18 *funding to post a forfeitable bid bond or other financial guaranty*
19 *as an assurance of the applicant's intent to move forward*
20 *expeditiously with the project proposed. The amount of any bid*
21 *bond or financial guaranty may not exceed 10 percent of the total*
22 *amount of the funding requested by the applicant.*

23 *(6) In awarding funding, the commission may provide*
24 *preference to projects that provide tangible demonstrable benefits*
25 *to communities with a plurality of minority or low-income*
26 *populations.*

27 *(c) Repowered existing facilities shall be eligible for funding*
28 *under this subdivision if the capital investment to repower the*
29 *existing facility equals at least 80 percent of the value of the*
30 *repowered facility.*

31 *(d) Facilities engaging in the combustion of municipal solid*
32 *waste or tires are not eligible for funding under this subdivision.*

33 *(e) Production incentives awarded under this subdivision prior*
34 *to January 1, 2002, shall commence on the date that a project*
35 *begins electricity production, provided that the project was*
36 *operational prior to January 1, 2002, unless the commission finds*
37 *that the project will not be operational prior to January 1, 2002,*
38 *due to circumstances beyond the control of the developer. Upon*
39 *making a finding that the project will not be operational due to*
40 *circumstances beyond the control of the developer, the commission*

1 shall pay production incentives over a five-year period,
2 commencing on the date of operation, provided that the date that
3 a project begins electricity production may not extend beyond
4 January 1, 2007.

5 (f) Facilities generating electricity from biomass energy shall
6 be considered an in-state renewable electricity generation
7 technology facility to the extent that they certify to the satisfaction
8 of the commission that fuel utilization is limited to the following:

9 (1) Agricultural crops and agricultural wastes and residues.

10 (2) Solid waste materials such as waste pallets, crates,
11 dunnage, manufacturing, and construction wood wastes,
12 landscape or right-of-way tree trimmings, mill residues that are
13 directly the result of the milling of lumber, and rangeland
14 maintenance residues.

15 (3) Wood and wood wastes that meet all of the following
16 requirements:

17 (A) Have been harvested pursuant to an approved timber
18 harvest plan prepared in accordance with the Z'berg-Nejedly
19 Forest Practice Act of 1973 (Chapter 8 (commencing with Sec.
20 4511) of Part 2 of Division 4).

21 (B) Have been harvested for the purpose of forest fire fuel
22 reduction or forest stand improvement.

23 (C) Do not transport or cause the transportation of species
24 known to harbor insect or disease nests outside zones of infestation
25 or current quarantine zones, as identified by the Department of
26 Food and Agriculture or the Department of Forestry and Fire
27 Protection, unless approved by the Department of Food and
28 Agriculture and the Department of Forestry and Fire Protection.

29 25744. (a) Seventeen and one-half percent of the money
30 collected pursuant to paragraph (6) of subdivision (c) of Section
31 381 of the Public Utilities Code shall be used for a multiyear,
32 consumer-based program to foster the development of emerging
33 renewable technologies in distributed generation applications.

34 (b) Any funds used for emerging technologies pursuant to this
35 section shall be expended in accordance with the report, subject to
36 all of the following requirements:

37 (1) Funding for emerging technologies shall be provided
38 through a competitive, market-based process that shall be in place
39 for a period of not less than five years, and shall be structured so
40 as to allow eligible emerging technology manufacturers and

1 *suppliers to anticipate and plan for increased sale and installation*
2 *volumes over the life of the program.*

3 *(2) The program shall provide monetary rebates, buydowns, or*
4 *equivalent incentives, subject to subparagraph (C), to purchasers,*
5 *lessees, lessors, or sellers of eligible electricity generating*
6 *systems. Incentives shall benefit the end-use consumer of*
7 *renewable generation by directly and exclusively reducing the*
8 *purchase or lease cost of the eligible system, or the cost of*
9 *electricity produced by the eligible system. Incentives shall be*
10 *issued on the basis of the rated electrical generating capacity of*
11 *the system measured in watts, or the amount of electricity*
12 *production of the system, measured in kilowatthours. Incentives*
13 *shall be limited to a maximum percentage of the system price, as*
14 *determined by the commission.*

15 *(3) Eligible distributed emerging technologies are*
16 *photovoltaic, solar thermal electric, fuel cell technologies that*
17 *utilize renewable fuels, and wind turbines of not more than 50*
18 *kilowatts rated electrical generating capacity per customer site,*
19 *and other distributed renewable emerging technologies that meet*
20 *the emerging technology eligibility criteria established by the*
21 *commission. Eligible electricity generating systems are intended*
22 *primarily to offset part or all of the consumer's own electricity*
23 *demand, and shall not be owned by local publicly owned electric*
24 *utilities, nor be located at a customer site that is not receiving*
25 *distribution service from an electrical corporation that is subject*
26 *to Section 381 of the Public Utilities Code and contributing funds*
27 *to support programs under this chapter. All eligible electricity*
28 *generating system components shall be new and unused, shall not*
29 *have been previously placed in service in any other location or for*
30 *any other application, and shall have a warranty of not less than*
31 *five years to protect against defects and undue degradation of*
32 *electrical generation output. Systems and their fuel resources shall*
33 *be located on the same premises of the end-use consumer where the*
34 *consumer's own electricity demand is located, and all eligible*
35 *electricity generating systems shall be connected to the utility grid*
36 *in California. The commission may require eligible electricity*
37 *generating systems to have meters in place to monitor and measure*
38 *a system's performance and generation. Only systems that will be*
39 *operated in compliance with applicable law and the rules of the*
40 *Public Utilities Commission shall be eligible for funding.*

1 (4) *The commission shall limit the amount of funds available*
2 *for any system or project of multiple systems and reduce the level*
3 *of funding for any system or project of multiple systems that has*
4 *received, or may be eligible to receive, any government or utility*
5 *funds, incentives, or credit.*

6 (5) *In awarding funding, the commission may provide*
7 *preference to systems that provide tangible demonstrable benefits*
8 *to communities with a plurality of minority or low-income*
9 *populations.*

10 (6) *In awarding funding, the commission shall develop and*
11 *implement eligibility criteria and a system that provides preference*
12 *to systems based upon system performance, taking into account*
13 *factors, including, but not limited to, shading, insulation levels,*
14 *and installation orientation.*

15 (7) *At least once annually, the commission shall publish and*
16 *make available to the public the balance of funds available for*
17 *emerging renewable energy resources for rebates, buydowns, and*
18 *other incentives for the purchase of these resources.*

19 25745. (a) *Ten percent of the money collected pursuant to*
20 *paragraph (6) of subdivision (c) of Section 381 of the Public*
21 *Utilities Code shall be used to provide customer credits to*
22 *customers that entered into a direct transaction on or before*
23 *September 20, 2001, for purchases of electricity produced by*
24 *registered in-state renewable electricity generating facilities.*

25 (b) *Any funds used for customer credits pursuant to this section*
26 *shall be expended, as provided in the report, subject to all of the*
27 *following requirements:*

28 (1) *Customer credits shall be awarded to California retail*
29 *customers located in the service territory of an electrical*
30 *corporation that is subject to Section 381 of the Public Utilities*
31 *Code that is contributing funds to support programs under this*
32 *chapter, and that is purchasing qualifying electricity from*
33 *renewable electricity generating facilities, through transactions*
34 *traceable to specific generation sources by any auditable contract*
35 *trail or equivalent that provides commercial verification that the*
36 *electricity from the claimed renewable electricity generating*
37 *facilities has been sold once and only once to a retail customer.*

38 (2) *Credits awarded pursuant to this paragraph may be paid*
39 *directly to electric service providers, energy marketers,*
40 *aggregators, or generators if those persons or entities account for*

1 *the credits on the recipient customer's bills. Credits may not exceed*
 2 *one and one-half cents (\$0.015) per kilowatthour. Credits awarded*
 3 *to members of the combined class of customers, other than*
 4 *residential and small commercial customers, may not exceed one*
 5 *thousand dollars (\$1,000) per customer per calendar year. In no*
 6 *event may more than 20 percent of the total customer incentive*
 7 *funds be awarded to members of the combined class of customers*
 8 *other than residential and small commercial customers.*

9 (3) *The commission shall develop criteria and procedures for*
 10 *the identification of energy purchasers and providers that are*
 11 *eligible to receive funds pursuant to this paragraph through a*
 12 *process consistent with this paragraph. These criteria and*
 13 *procedures shall apply only to funding eligibility and may not*
 14 *extend to other renewable marketing claims.*

15 (4) *Customer credits may not be awarded for the purchase of*
 16 *electricity that is used to meet the obligations of a renewable*
 17 *portfolio standard.*

18 (5) *The Public Utilities Commission shall notify the*
 19 *commission in writing within 10 days of revoking or suspending*
 20 *the registration of any electric service provider pursuant to*
 21 *paragraph (4) of subdivision (b) of Section 394.25 of the Public*
 22 *Utilities Code.*

23 (6) *By March 31, 2003, the commission shall report to the*
 24 *Governor and the Legislature on how to most effectively utilize the*
 25 *funds for customer credits, including whether, and under what*
 26 *conditions, the program should be continued. The report shall*
 27 *include an examination of trends in markets for renewable energy,*
 28 *including the trading of nonenergy attributes, and the role of*
 29 *customer credits in these markets. The report will recommend an*
 30 *appropriate funding allocation for the customer credits and how*
 31 *implementation of the customer credits should be structured, if*
 32 *appropriate.*

33 25746. *One percent of the money collected pursuant to*
 34 *paragraph (6) of subdivision (e) of Section 381 of the Public*
 35 *Utilities Code shall be used in accordance with the report to*
 36 *promote renewable energy and disseminate information on*
 37 *renewable energy technologies, including emerging renewable*
 38 *technologies, and to help develop a consumer market for*
 39 *renewable energy and for small-scale emerging renewable energy*
 40 *technologies.*

1 25747. (a) *The commission shall adopt guidelines governing*
2 *the funding programs authorized under this chapter, at a publicly*
3 *noticed meeting offering all interested parties an opportunity to*
4 *comment. Substantive changes to the guidelines may not be*
5 *adopted without at least 10 days' written notice to the public. The*
6 *public notice of meetings required by this subdivision may not be*
7 *less than 30 days. Notwithstanding any other provision of law, any*
8 *guidelines adopted pursuant to this chapter shall be exempt from*
9 *the requirements of Chapter 3.5 (commencing with Section 11340)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code. The*
11 *Legislature declares that the changes made to this subdivision by*
12 *the act amending this section during the 2002 portion of the*
13 *2001–02 Regular Session are declaratory of, and not a change in*
14 *existing law.*

15 (b) *Funds to further the purposes of this chapter may be*
16 *committed for multiple years.*

17 (c) *Awards made pursuant to this chapter are grants, subject to*
18 *appeal to the commission upon a showing that factors other than*
19 *those described in the guidelines adopted by the commission were*
20 *applied in making the awards and payments. Any actions taken by*
21 *an applicant to apply for, or become or remain eligible and*
22 *registered to receive, payments or awards, including satisfying*
23 *conditions specified by the commission, shall not constitute the*
24 *rendering of goods, services, or a direct benefit to the commission.*

25 25748. *The commission shall report to the Legislature on or*
26 *before May 31, 2000, and on or before May 31 of every second year*
27 *thereafter, regarding the results of the mechanisms funded*
28 *pursuant to this chapter. Reports prepared pursuant to this section*
29 *shall include a description of the allocation of funds among*
30 *existing, new and emerging technologies; the allocation of funds*
31 *among programs, including consumer-side incentives; and the*
32 *need for the reallocation of money among those technologies. The*
33 *reports shall discuss the progress being made toward achieving the*
34 *17 percent target provided in Section 25740 by each funding*
35 *category authorized pursuant to this chapter. The reports shall*
36 *also address the allocation of funds from interest on the accounts*
37 *described in this chapter, and money in the accounts described in*
38 *subdivision (e) of Section 381 of the Public Utilities Code. Money*
39 *may be reallocated without further legislative action among*
40 *existing, new, and emerging technologies and consumer-side*

1 *programs in a manner consistent with the report and with the latest*
 2 *report provided to the Legislature pursuant to this section, except*
 3 *that reallocations may not reduce the allocation established in*
 4 *Section 25743 nor increase the allocation established in Section*
 5 *25742.*

6 25749. *The commission shall, by December 1, 2003, prepare*
 7 *and submit to the Legislature a comprehensive renewable*
 8 *electricity generation resource plan that describes the renewable*
 9 *resource potential available in California, and recommendations*
 10 *for a plan for development to achieve the target of increasing the*
 11 *amount of electricity generated from renewable sources per year,*
 12 *so that it equals 17 percent of the total electricity generated for*
 13 *consumption in California by 2006. The commission shall consult*
 14 *with the Public Utilities Commission, electrical corporations, and*
 15 *the Independent System Operator, in the development and*
 16 *preparation of the plan.*

17 25750. *The commission shall participate in proceedings at the*
 18 *Public Utilities Commission that relate to or affect efforts to*
 19 *stimulate the development of electricity generated from renewable*
 20 *sources, in order to obtain coordination of the state's efforts to*
 21 *achieve the target of increasing the amount of electricity generated*
 22 *from renewable sources per year, so that it equals 17 percent of the*
 23 *total electricity generated for consumption in California by 2006.*

24 SEC. 2. Section 383.5 of the Public Utilities Code is repealed.

25 ~~383.5.—(a) It is the intent of the Legislature in establishing this~~
 26 ~~program, to increase the amount of renewable electricity~~
 27 ~~generated per year, so that it equals at least 17 percent of the total~~
 28 ~~electricity generated for consumption in California.~~

29 ~~(b) As used in this section, the following terms have the~~
 30 ~~following meaning:~~

31 ~~(1) “In-state renewable electricity generation technology”~~
 32 ~~means a facility that meets all of the following criteria:~~

33 ~~(A) The facility uses biomass, solar thermal, photovoltaic,~~
 34 ~~wind, geothermal, fuel cells using renewable fuels, small~~
 35 ~~hydroelectric generation of 30 megawatts or less, digester gas,~~
 36 ~~municipal solid waste conversion, landfill gas, ocean wave, ocean~~
 37 ~~thermal, or tidal current, and any additions or enhancements to the~~
 38 ~~facility using that technology.~~

39 ~~(B) The facility is located in the state or near the border of the~~
 40 ~~state with the first point of connection to the Western Electricity~~

~~Coordinating Council (WECC) transmission system located within this state.~~

~~(C) For the purposes of this subdivision, “solid waste conversion” means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:~~

~~(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.~~

~~(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.~~

~~(iii) The technology produces no discharges to surface or groundwaters of the state.~~

~~(iv) The technology produces no hazardous wastes.~~

~~(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.~~

~~(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.~~

~~(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.~~

~~(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.~~

~~(2) “Report” means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.~~

~~(3) “Energy Commission” means the State Energy Resources Conservation and Development Commission.~~

~~(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under this subdivision shall be limited to those technologies found eligible for funds by the Energy Commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6.~~

~~(2) Any funds used to support in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:~~

~~(A) Of the funding for existing renewable electricity generation technology facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.~~

~~(B) The Energy Commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The Energy Commission shall also consider inflation when adjusting the structure.~~

~~(C) The Energy Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market clearing price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market clearing price for electricity shall be determined by the Energy Commission based on the energy prices paid to nonutility power generators as authorized by the commission, or on otherwise available measures of market price. For the first tier biomass technologies, the Energy Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a~~

1 higher incentive when the plants are receiving the lowest price.
2 The Energy Commission may establish a different incentive rate
3 within the same technology tier to account for discounted
4 contracts.

5 (D) Facilities that are eligible to receive funding pursuant to
6 this subdivision shall be registered in accordance with criteria
7 developed by the Energy Commission and those facilities may not
8 receive payments for any electricity produced that has any of the
9 following characteristics:

10 (i) Is sold at monthly average rates equal to or greater than the
11 applicable target price, as determined by the Energy Commission.

12 (ii) Is that portion of electricity generation attributable to the
13 use of qualified agricultural biomass fuel, for a facility that is
14 receiving fuel-based incentives through the Agricultural
15 Biomass-to-Energy Incentive Grant Program established pursuant
16 to Part 3 (commencing with Section 1101) of Division 1 of the
17 Food and Agricultural Code. Notwithstanding subdivision (f) of
18 Section 1104 of the Food and Agricultural Code, facilities that
19 receive funding from the Agricultural Biomass-to-Energy
20 Incentive Grant Program are eligible to receive funding pursuant
21 to this subdivision.

22 (iii) Is used onsite or is sold to customers in a manner that
23 excludes competitive transition charge payments, or is otherwise
24 excluded from competitive transition charge payments.

25 (d) (1) Fifty-one and one-half percent of the funds collected
26 pursuant to paragraph (6) of subdivision (c) of Section 381, shall
27 be used for programs designed to foster the development of new
28 in-state renewable electricity generation technology facilities, and
29 to secure for the state the environmental, economic, and reliability
30 benefits that continued operation of those facilities will provide.

31 (2) Any funds used for new in-state renewable electricity
32 generation technology facilities pursuant to this subdivision shall
33 be expended in accordance with the report, subject to all of the
34 following requirements:

35 (A) In order to cover the above market costs of renewable
36 resources as approved by the commission and selected by retail
37 sellers to fulfill their obligations under Article 16 (commencing
38 with Section 399.11), the Energy Commission shall award funds
39 in the form of supplemental energy payments, subject to the
40 following criteria:

1 ~~(i) The Energy Commission may establish caps on~~
2 ~~supplemental energy payments. The caps shall be designed to~~
3 ~~provide for a viable energy market capable of achieving the goals~~
4 ~~of Article 16 (commencing with Section 399.11). The Energy~~
5 ~~Commission may waive application of the caps to accommodate~~
6 ~~a facility, if it is demonstrated to the satisfaction of the Energy~~
7 ~~Commission, that operation of the facility would provide~~
8 ~~substantial economic and environmental benefits to end-use~~
9 ~~customers subject to the funding requirements of Section 381.~~

10 ~~(ii) Supplemental energy payments shall be awarded only to~~
11 ~~facilities that are eligible for funding under this subdivision.~~

12 ~~(iii) Supplemental energy payments awarded to facilities~~
13 ~~selected by an electrical corporation pursuant to Article 16~~
14 ~~(commencing with Section 399.11) shall be paid for the lesser of~~
15 ~~10 years, or the duration of the contract with the electrical~~
16 ~~corporation.~~

17 ~~(iv) The Energy Commission shall reduce or terminate~~
18 ~~supplemental energy payments for projects that fail either to~~
19 ~~commence and maintain operations consistent with the contractual~~
20 ~~obligations to an electrical corporation, or that fail to meet~~
21 ~~eligibility requirements.~~

22 ~~(v) Funds shall be managed in an equitable manner in order for~~
23 ~~retail sellers to meet their obligation under Article 16~~
24 ~~(commencing with Section 399.11).~~

25 ~~(B) The Energy Commission may determine as part of a~~
26 ~~solicitation, that a facility that does not meet the definition of~~
27 ~~“in-state renewable electricity generation technology” facility~~
28 ~~solely because it is located outside the state, is eligible for funding~~
29 ~~under this subdivision if it meets both of the following~~
30 ~~requirements:~~

31 ~~(i) It is located so that it is or will be connected to the Western~~
32 ~~Electricity Coordinating Council (WECC) transmission system.~~

33 ~~(ii) It is developed with guaranteed contracts to sell its~~
34 ~~generation to end-use customers subject to the funding~~
35 ~~requirements of Section 381, or to marketers that provide this~~
36 ~~guarantee for resale of the generation, for a period of time at least~~
37 ~~equal to the amount of time it receives incentive payments under~~
38 ~~this subdivision.~~

39 ~~(C) Facilities that are eligible to receive funding pursuant to~~
40 ~~this subdivision shall be registered in accordance with criteria~~

1 developed by the Energy Commission and those facilities may not
2 receive payments for any electricity produced that has any of the
3 following characteristics:

4 (i) Is sold under an existing long-term contract with an existing
5 in-state electrical corporation if the contract includes fixed energy
6 or capacity payments, except for that electricity that satisfies the
7 provisions of subparagraph (C) of paragraph (1) of subdivision (e)
8 of Section 399.6.

9 (ii) Is used onsite or is sold to customers in a manner that
10 excludes competitive transition charge payments, or is otherwise
11 excluded from competitive transition charge payments.

12 (iii) Is produced by a facility that is owned by an electrical
13 corporation or a local publicly owned electric utility as defined in
14 subdivision (d) of Section 9604.

15 (iv) Is a hydroelectric generation project that will require a new
16 or increased appropriation of water under Part 2 (commencing
17 with Section 1200) of Division 2 of the Water Code.

18 (D) Eligibility to compete for funds or to receive funds shall be
19 contingent upon having to sell the output of the renewable
20 electricity generation facility to customers subject to the funding
21 requirements of Section 381.

22 (E) The Energy Commission may require applicants
23 competing for funding to post a forfeitable bid bond or other
24 financial guaranty as an assurance of the applicant's intent to move
25 forward expeditiously with the project proposed. The amount of
26 any bid bond or financial guaranty may not exceed 10 percent of
27 the total amount of the funding requested by the applicant.

28 (F) In awarding funding, the Energy Commission may provide
29 preference to projects that provide tangible demonstrable benefits
30 to communities with a plurality of minority or low-income
31 populations.

32 (3) Repowered existing facilities shall be eligible for funding
33 under this subdivision if the capital investment to repower the
34 existing facility equals at least 80 percent of the value of the
35 repowered facility.

36 (4) Facilities engaging in the combustion of municipal solid
37 waste or tires are not eligible for funding under this subdivision.

38 (5) Production incentives awarded under this subdivision prior
39 to January 1, 2002, shall commence on the date that a project
40 begins electricity production, provided that the project was

1 ~~operational prior to January 1, 2002, unless the Energy~~
2 ~~Commission finds that the project will not be operational prior to~~
3 ~~January 1, 2002, due to circumstances beyond the control of the~~
4 ~~developer. Upon making a finding that the project will not be~~
5 ~~operational due to circumstances beyond the control of the~~
6 ~~developer, the Energy Commission shall pay production~~
7 ~~incentives over a five year period, commencing on the date of~~
8 ~~operation, provided that the date that a project begins electricity~~
9 ~~production may not extend beyond January 1, 2007.~~

10 ~~(6) Facilities generating electricity from biomass energy shall~~
11 ~~be considered an in-state renewable electricity generation~~
12 ~~technology facility to the extent that they certify to the satisfaction~~
13 ~~of the Energy Commission that fuel utilization is limited to the~~
14 ~~following:~~

15 ~~(A) Agricultural crops and agricultural wastes and residues.~~

16 ~~(B) Solid waste materials such as waste pallets, crates,~~
17 ~~dunnage, manufacturing, and construction wood wastes,~~
18 ~~landscape or right-of-way tree trimmings, mill residues that are~~
19 ~~directly the result of the milling of lumber, and rangeland~~
20 ~~maintenance residues.~~

21 ~~(C) Wood and wood wastes that meet all of the following~~
22 ~~requirements:~~

23 ~~(i) Have been harvested pursuant to an approved timber harvest~~
24 ~~plan prepared in accordance with the Z'berg-Nejedly Forest~~
25 ~~Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2,~~
26 ~~Div. 4, P.R.C.).~~

27 ~~(ii) Have been harvested for the purpose of forest fire fuel~~
28 ~~reduction or forest stand improvement.~~

29 ~~(iii) Do not transport or cause the transportation of species~~
30 ~~known to harbor insect or disease nests outside zones of infestation~~
31 ~~or current quarantine zones, as identified by the Department of~~
32 ~~Food and Agriculture or the Department of Forestry and Fire~~
33 ~~Protection, unless approved by the Department of Food and~~
34 ~~Agriculture and the Department of Forestry and Fire Protection.~~

35 ~~(e) (1) Seventeen and one-half percent of the funds collected~~
36 ~~pursuant to paragraph (6) of subdivision (c) of Section 381 shall~~
37 ~~be used for a multiyear, consumer-based program to foster the~~
38 ~~development of emerging renewable technologies in distributed~~
39 ~~generation applications.~~

~~(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:~~

~~(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.~~

~~(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or in the amount of electricity production of the system, measured in kilowatthours, determined by the Energy Commission.~~

~~(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the Energy Commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, and shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible~~

electricity generating systems shall be connected to the utility grid in California. The Energy Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the commission shall be eligible for funding.

(D) The Energy Commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(E) In awarding funding, the Energy Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low income populations.

(F) In awarding funding, the Energy Commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insolation levels, and installation orientation.

(f) (1) Ten percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(2) Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 that is contributing funds to support programs under this section, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

~~(B) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's utility bills. Credits may not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.~~

~~(C) The Energy Commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.~~

~~(D) The commission shall notify the Energy Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.~~

~~(E) By March 31, 2003, the Energy Commission shall report to the Governor and the Legislature on how to most effectively utilize the funds for customer credits, including whether, and under what conditions, the program should be continued. The report shall include an examination of trends in markets for renewable energy, including the trading of nonenergy attributes, and the role of customer credits in these markets. The report will recommend an appropriate funding allocation for the customer credits and how implementation of the customer credits should be structured, if appropriate.~~

~~(F) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.~~

~~(g) One percent of the funds collected pursuant to paragraph (6) of subdivision (e) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer~~

1 ~~market for renewable energy and for small-scale emerging~~
2 ~~renewable energy technologies.~~

3 ~~(h) (1) The Energy Commission shall adopt guidelines~~
4 ~~governing the funding programs authorized under this section and~~
5 ~~Section 399.13, at a publicly noticed meeting offering all~~
6 ~~interested parties an opportunity to comment. Substantive changes~~
7 ~~to the guidelines may not be adopted without at least 10 days'~~
8 ~~written notice to the public. The public notice of meetings required~~
9 ~~by this paragraph may not be less than 30 days. Notwithstanding~~
10 ~~any other provision of law, any guidelines adopted pursuant to this~~
11 ~~section shall be exempt from the requirements of Chapter 3.5~~
12 ~~(commencing with Section 11340) of Division 3 of Title 2 of the~~
13 ~~Government Code. The Legislature declares that the changes~~
14 ~~made to this paragraph by the act amending this section during the~~
15 ~~2002 portion of the 2001-02 Regular Session are declaratory of,~~
16 ~~and not a change in existing law.~~

17 ~~(2) Funds to further the purposes of this section may be~~
18 ~~committed for multiple years.~~

19 ~~(3) Awards made pursuant to this section are grants, subject to~~
20 ~~appeal to the Energy Commission upon a showing that factors~~
21 ~~other than those described in the guidelines adopted by the Energy~~
22 ~~Commission were applied in making the awards and payments.~~
23 ~~Any actions taken by an applicant to apply for, or become or~~
24 ~~remain eligible and registered to receive, payments or awards,~~
25 ~~including satisfying conditions specified by the Energy~~
26 ~~Commission, shall not constitute the rendering of goods, services,~~
27 ~~or a direct benefit to the Energy Commission.~~

28 ~~(i) The Energy Commission shall report to the Legislature on~~
29 ~~or before May 31, 2000, and on or before May 31 of every second~~
30 ~~year thereafter, regarding the results of the mechanisms funded~~
31 ~~pursuant to this section. Reports prepared pursuant to this~~
32 ~~subdivision shall include a description of the allocation of funds~~
33 ~~among existing, new and emerging technologies; the allocation of~~
34 ~~funds among programs, including consumer-side incentives; and~~
35 ~~the need for the reallocation of money among those technologies.~~
36 ~~The reports shall discuss the progress being made toward~~
37 ~~achieving the 17 percent target provided in subdivision (a) by each~~
38 ~~funding category authorized pursuant to subdivisions (c), (d), (e),~~
39 ~~(f), and (g) of this section. The reports shall also address the~~
40 ~~allocation of funds from interest on the accounts described in this~~

1 ~~section, and money in the accounts described in subdivision (e) of~~
2 ~~Section 381. Notwithstanding subdivisions (c), (d), (e), (f), and (g)~~
3 ~~of this section, money may be reallocated without further~~
4 ~~legislative action among existing, new, and emerging technologies~~
5 ~~and consumer-side programs in a manner consistent with the~~
6 ~~report and with the latest report provided to the Legislature~~
7 ~~pursuant to this subdivision, except that reallocations may not~~
8 ~~reduce the allocation established in subdivision (d) nor increase~~
9 ~~the allocation established in subdivision (e).~~

10 ~~(j) The Energy Commission shall, by December 1, 2003,~~
11 ~~prepare and submit to the Legislature a comprehensive renewable~~
12 ~~electricity generation resource plan that describes the renewable~~
13 ~~resource potential available in California, and recommendations~~
14 ~~for a plan for development to achieve the target of increasing the~~
15 ~~amount of electricity generated from renewable sources per year,~~
16 ~~so that it equals 17 percent of the total electricity generated for~~
17 ~~consumption in California by 2006. The Energy Commission shall~~
18 ~~consult with the commission, electrical corporations, and the~~
19 ~~Independent System Operator, in the development and preparation~~
20 ~~of the plan.~~

21 ~~(k) The Energy Commission shall participate in proceedings at~~
22 ~~the commission that relate to or affect efforts to stimulate the~~
23 ~~development of electricity generated from renewable sources, in~~
24 ~~order to obtain coordination of the state's efforts to achieve the~~
25 ~~target of increasing the amount of electricity generated from~~
26 ~~renewable sources per year, so that it equals 17 percent of the total~~
27 ~~electricity generated for consumption in California by 2006.~~

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30 **All matter omitted in this version of the**
31 **bill appears in the bill as introduced in the**
32 **Senate February 12, 2003, 2003 (JR 11)**
33
34